

No. CR 08-00560

Rmw

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

THE UNITED STATES OF AMERICA

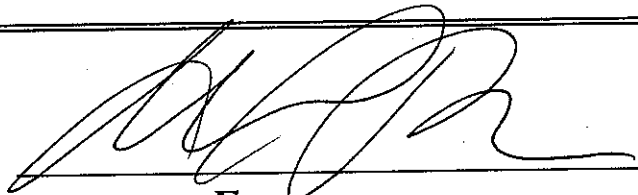
vs.

HASSAN ABPIKAR

SUPERSEDING INDICTMENT

SEE ATTACHMENT

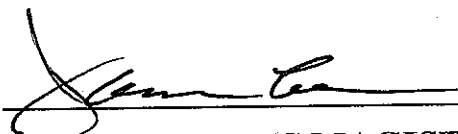
A true bill.



Foreperson

Filed in open court this 24 day of November

A.D. 2009



UNITED STATES MAGISTRATE JUDGE

Bail. \$ NO PROCESS

FILED
09 NOV 24 PM 3:52
CLERK OF U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ATTACHMENT TO PENALTY SHEET
U.S.
v.

HASSAN ABPIKAR

COUNTS ONE AND FOUR: Title 18, United States Code, Section 1001(a)(1)-Falsifying and Concealing a Material Fact in a Matter Before a Government Agency

COUNTS TWO AND FIVE: Title 18, United States Code, Section § 1015(a) - False Statement Under Oath Relating to Naturalization or Citizenship

COUNTS THREE AND SIX: Title 18, United States Code, Section § 1621 - Perjury

JOSEPH P. RUSSONIELLO (CSBN 44332)
United States Attorney

FILED
09 NOV 24 PM 3:51
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

HASSAN ABPIKAR,

Defendant.

No. CR 08-00560 RMW

VIOLATIONS: 18 U.S.C. § 1001(a) (1) –
Falsifying and Concealing a Material Fact in
a Matter Before a Government Agency (Two
Counts); 18 U.S.C. § 1015(a) – False
Statement Under Oath Relating to
Naturalization or Citizenship (Two Counts);
18 U.S.C. § 1621 – Perjury (Two Counts).

SAN JOSE VENUE

SUPERSEDING INDICTMENT

The Grand Jury charges:

COUNT ONE: (18 U.S.C. § 1001(a)(1) – Falsifying and Concealing a Material Fact in a Matter
Before a Government Agency)

1. On or about November 29, 2004, in the Northern District of California, the
defendant,

HASSAN ABPIKAR,

in a matter within the jurisdiction of the executive branch of the government of the United States,
did knowingly and willfully falsify, conceal, and cover up a material fact by trick, scheme, and
device, by failing to disclose the following information in response to questions on a Form N-400

SUPERSEDING INDICTMENT
United States v. Abpikar

1 Application submitted to the Department of Homeland Security:

- 2 a. Form N-400 Application for Naturalization, Question 10.D.17, states: "Have you
3 EVER been charged with committing any crime or offense?" Defendant
4 responded in the affirmative and disclosed certain prior criminal conduct and
5 court proceedings, but failed to disclose that on or about December 6, 1979, he
6 was charged by the State of Oklahoma for the offense of Telephoning a Bomb
7 Threat;
- 8 b. Form N-400 Application for Naturalization, Question 10.D.17, states: "Have you
9 EVER been charged with committing any crime or offense?" Defendant
10 responded in the affirmative and disclosed certain prior criminal conduct and
11 court proceedings, but failed to disclose that on or about December 7, 1979, he
12 was charged by the State of Oklahoma for the offense of Assault and Battery
13 Upon a Law Officer;
- 14 c. Form N-400, Application for Naturalization, Question 10.D.18, states: "Have you
15 EVER been convicted of a crime or offense?" Defendant responded in the
16 affirmative and disclosed certain prior criminal conduct and court proceedings,
17 but failed to disclose that on or about February 27, 1980, he was convicted by the
18 State of Oklahoma for the offense of Telephoning a Bomb Threat;
- 19 d. Form N-400, Application for Naturalization, Question 10.D.18, states: "Have you
20 EVER been convicted of a crime or offense?" Defendant responded in the
21 affirmative and disclosed certain prior criminal conduct and court proceedings,
22 but failed to disclose that on or about February 27, 1980, he was convicted by the
23 State of Oklahoma for the offense of Assault and Battery Upon a Law Officer;
- 24 e. Form N-400, Application for Naturalization, Question 10.D.20, states: "Have you
25 EVER received a suspended sentence, been placed on probation, or been
26 paroled?" Defendant responded in the affirmative and disclosed certain prior
27 criminal conduct and court proceedings, but failed to disclose that on or about
28 February 27, 1980, he received a suspended sentence by the State of Oklahoma of

2 years imprisonment for the offense of Telephoning a Bomb Threat;

f. Form N-400, Application for Naturalization, Question 10.D.20, states: "Have you EVER received a suspended sentence, been placed on probation, or been paroled?" Defendant responded in the affirmative and disclosed certain prior criminal conduct and court proceedings, but failed to disclose that on or about February 27, 1980, he received a suspended sentence by the State of Oklahoma of 6 months imprisonment for the offense of Assault and Battery Upon a Law Officer;

g. Form N-400, Application for Naturalization, Question 10.D.20, states: "Have you EVER received a suspended sentence, been placed on probation, or been paroled?" Defendant responded in the affirmative and disclosed certain prior criminal conduct and court proceedings, but failed to disclose that on or about October 29, 1993, he received a suspended sentence by the State of California of 60 days imprisonment for the offense of Acting as Dealer/Manufacturer without a License;

All in violation of Title 18, United States Code, section 1001(a)(1).

COUNT TWO: (18 U.S.C. § 1015(a) – False Statement Under Oath Relating to Naturalization or Citizenship)

2. The allegations contained in Paragraph 1 are re-alleged and hereby incorporated herein.

3. On or about November 29, 2004, in the Northern District of California, the defendant,

HASSAN ABPIKAR,

did knowingly make a false statement under oath, in a case, proceeding, and matter relating to, and under, and by virtue of any law of the United States, relating to naturalization, citizenship, and registry of aliens, to wit: the defendant submitted a signed written Form N-400 Application for Naturalization to the Department of Homeland Security, which contained the following false statements:

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- a. The defendant falsely represented that he had disclosed relevant prior criminal conduct and court proceedings in response to Questions 10D.17, 18, and 20, when in fact he had failed to do so, as described above in Paragraph 1;
- b. Form N-400, Application for Naturalization, Question 4.A requires the identification of the applicant's home address. The defendant falsely stated that his home address was "3254 Fleur De Lis Ct., San Jose, Calif." at the time of the filing of the application.
- c. Form N-400, Question 3.G asks for the applicant's marital status. The defendant falsely checked the box marked "Single, Never Married" even though he had previously been married and divorced.

All in violation of Title 18, United States Code, section 1015(a).

COUNT THREE: (18 U.S.C. § 1621 – Perjury)

4. The allegations contained in Paragraph 1 are re-alleged and hereby incorporated herein.

5. On or about the November 29, 2004, in the Northern District of California, the defendant,

HASSAN ABPIKAR,

having taken an oath to provide truthful written testimony in a Form N-400 Application for Naturalization filed with the United States Department of Homeland Security, knowingly made a false material declaration, to wit:

- a. The defendant falsely represented that he had disclosed relevant prior criminal conduct and court proceedings in response to Questions 10D.17, 18, and 20, when in fact he had failed to do so, as described above in Paragraph 1.

All in violation of Title 18, United States Code, Section § 1621.

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COUNT FOUR: (18 U.S.C. § 1001(a)(1) – Falsifying and Concealing a Material Fact in a Matter Before a Government Agency)

6. On or about May 18, 2005, in the Northern District of California, the defendant,
HASSAN ABPIKAR,
in a matter within the jurisdiction of the executive branch of the government of the United States,
did knowingly and willfully falsify, conceal, and cover up a material fact by trick, scheme, and
device, by failing to disclose the following information in response to questions on a Form N-400
Application submitted to the Department of Homeland Security:

- a. Form N-400 Application for Naturalization, Question 10.D.17, states: “Have you
EVER been charged with committing any crime or offense?” Defendant
responded in the affirmative and disclosed certain prior criminal conduct and
court proceedings, but failed to disclose that on or about December 6, 1979, he
was charged by the State of Oklahoma for the offense of Telephoning a Bomb
Threat;
- b. Form N-400 Application for Naturalization, Question 10.D.17, states: “Have you
EVER been charged with committing any crime or offense?” Defendant
responded in the affirmative and disclosed certain prior criminal conduct and
court proceedings, but failed to disclose that on or about December 7, 1979, he
was charged by the State of Oklahoma for the offense of Assault and Battery
Upon a Law Officer;
- c. Form N-400, Application for Naturalization, Question 10.D.18, states: “Have you
EVER been convicted of a crime or offense?” Defendant responded in the
affirmative and disclosed certain prior criminal conduct and court proceedings,
but failed to disclose that on or about February 27, 1980, he was convicted by the
State of Oklahoma for the offense of Telephoning a Bomb Threat;
- d. Form N-400, Application for Naturalization, Question 10.D.18, states: “Have you
EVER been convicted of a crime or offense?” Defendant responded in the
affirmative and disclosed certain prior criminal conduct and court proceedings,

- 1 but failed to disclose that on or about February 27, 1980, he was convicted by the
 2 State of Oklahoma for the offense of Assault and Battery Upon a Law Officer;
 3 e. Form N-400, Application for Naturalization, Question 10.D.20, states: "Have you
 4 EVER received a suspended sentence, been placed on probation, or been
 5 paroled?" Defendant responded in the affirmative and disclosed certain prior
 6 criminal conduct and court proceedings, but failed to disclose that on or about
 7 February 27, 1980, he received a suspended sentence by the State of Oklahoma of
 8 2 years imprisonment for the offense of Telephoning a Bomb Threat;
 9 f. Form N-400, Application for Naturalization, Question 10.D.20, states: "Have you
 10 EVER received a suspended sentence, been placed on probation, or been
 11 paroled?" Defendant responded in the affirmative and disclosed certain prior
 12 criminal conduct and court proceedings, but failed to disclose that on or about
 13 February 27, 1980, he received a suspended sentence by the State of Oklahoma of
 14 6 months imprisonment for the offense of Assault and Battery Upon a Law
 15 Officer;
 16 g. Form N-400, Application for Naturalization, Question 10.D.20, states: "Have you
 17 EVER received a suspended sentence, been placed on probation, or been
 18 paroled?" Defendant responded in the affirmative and disclosed certain prior
 19 criminal conduct and court proceedings, but failed to disclose that on or about
 20 October 29, 1993, he received a suspended sentence by the State of California of
 21 60 days imprisonment for the offense of Acting as Dealer/Manufacturer without a
 22 License;
 23 h. Form N-400, Application for Naturalization, Question 10.D.16, states: "Have you
 24 EVER been arrested, cited, or detained by a law enforcement officer (including
 25 INS and military officers) for any reason?" Defendant failed to disclose that on
 26 May 14, 2005, he was arrested, cited, and detained by the State of California for
 27 the offenses Burglary – First Degree, Receiving Stolen Property, Possessing
 28 Burglary Tools, and Theft of Personal Property/Petty Theft;

All in violation of Title 18, United States Code, section 1001(a)(1).

COUNT FIVE: (18 U.S.C. § 1015(a) – False Statement Under Oath Relating to Naturalization or Citizenship)

7. The allegations contained in Paragraph 6 are re-alleged and hereby incorporated herein.

8. On or about May 18, 2005, in the Northern District of California, the defendant,

HASSAN ABPIKAR,

did knowingly make a false statement under oath, in a case, proceeding, and matter relating to, and under, and by virtue of any law of the United States, relating to naturalization, citizenship, and registry of aliens, to wit: the defendant affirmed a previously submitted, signed written Form N-400 Application for Naturalization to the Department of Homeland Security, which contained the following false statements:

- a. The defendant falsely represented that he had disclosed prior criminal conduct and court proceedings in response to Questions 10D.16, 17, 18, and 20, when in fact he had failed to do so, as described above in Paragraph 6;
- b. Form N-400, Application for Naturalization, Question 4.A requires the identification of the applicant's home address. The defendant falsely affirmed that his home address was "3254 Fleur De Lis Ct., San Jose, Calif." at the time of the filing of the application.
- c. Form N-400, Question 3.G asks for the applicant's marital status. The defendant falsely checked the box marked "Single, Never Married" even though he had previously been married and divorced.

All in violation of Title 18, United States Code, section 1015(a).

COUNT SIX: (18 U.S.C. § 1621 – Perjury)

9. The allegations contained in Paragraph 6 are re-alleged and hereby incorporated herein.

10. On or about the May 18, 2005, in the Northern District of California, the defendant,

HASSAN ABPIKAR,

having taken an oath to testify truthfully before an officer with the Department of Homeland Security in a naturalization interview in the Northern District of California, knowingly made a

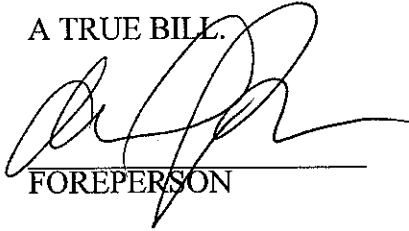
1 false material declaration, to wit:

- 2 a. The defendant falsely represented that he had disclosed relevant prior criminal
3 conduct and court proceedings in response to Questions 10D.16, 17, 18, and 20 in
4 a previously submitted, signed written Form N-400 Application for Naturalization
5 to the Department of Homeland Security, when in fact he had failed to do so, as
6 described above in Paragraph 6;

7 All in violation of Title 18, United States Code, Section § 1621.

8
9 DATED: November 24, 2009

A TRUE BILL.


FOREPERSON

10
11
12 JOSEPH P. RUSSONIELLO
13 United States Attorney

14 
15 JEFFREY D. NEDROW
16 Deputy Chief, San Jose Branch

17 (Approved as to form: )
18 AUSA KALEBA

AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT
 BY: ☐ COMPLAINT ☐ INFORMATION ☒ INDICTMENT
☒ SUPERSEDING
OFFENSE CHARGED

SEE ATTACHMENT

- ☐
- Petty
-
- ☐
- Minor
-
- ☐
- Misdemeanor
-
- ☒
- Felony

PENALTY:

SEE ATTACHMENT

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)

S/A Dwayne Sanchez, ICE.

- ☐
- person is awaiting trial in another Federal or State Court, give name of court

- ☐
- this person/proceeding is transferred from another district per (circle one) FRCrP 20, 21 or 40. Show District

- ☐
- this is a reprosecution of charges previously dismissed which were dismissed on motion of:

☐ U.S. Att'y ☐ Defense

- ☐
- this prosecution relates to a pending case involving this same defendant

- ☐
- prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under

SHOW
DOCKET NO.MAGISTRATE
CASE NO.
 Name and Office of Person
 Furnishing Information on
 THIS FORM

JOSEPH P. RUSSONIELLO

☒ U.S. Att'y ☐ Other U.S. Agency

 Name of Asst. U.S. Att'y
 (if assigned)

DANIEL KALEBA

 Name of District Court, and/or Judge/Magistrate Location
 NORTHERN DISTRICT OF CALIFORNIA

DEFENDANT - U.S.

HASSAN ABPIKAR

DISTRICT COURT NUMBER

CR08-0560RMW

DEFENDANT**IS NOT IN CUSTODY**

- 1) ☐ Has not been arrested, pending outcome this proceeding.
 If not detained give date any prior summons was served on above charges
- 2) ☐ Is a Fugitive
- 3) ☒ Is on Bail or Release from (show District)

NORTHERN DISTRICT OF CALIFORNIA

IS IN CUSTODY

- 4) ☐ On this charge
- 5) ☐ On another conviction
- 6) ☐ Awaiting trial on other charges } ☐ Fed'l ☐ State

If answer to (6) is "Yes", show name of institution

Has detainer
been filed?
☐ Yes
☐ No

 If "Yes"
 give date
 filed
DATE OF
ARREST

Month/Day/Year

Or... if Arresting Agency & Warrant were not

Month/Day/Year

DATE TRANSFERRED
TO U.S. CUSTODY
☐ This report amends AO 257 previously submitted
ADDITIONAL INFORMATION OR COMMENTS**PROCESS:**
☐ SUMMONS ☒ NO PROCESS*

☐ WARRANT Bail Amount: _____

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address: _____

 *Where defendant previously apprehended on complaint, no new summons
 or warrant needed, since Magistrate has scheduled arraignment

Date/Time: _____

Before Judge: _____

Comments: _____

ATTACHMENT TO PENALTY SHEET

U.S.

v.

HASSAN ABPIKAR

COUNT ONE AND FOUR: Title 18, United States Code, Section 1001(a)(1)-Falsifying and Concealing a Material Fact in a Matter Before a Government Agency

Penalties: Five years imprisonment;
\$250,000 fine
Three years supervised release;
\$100 special assessment.

COUNTS TWO AND FIVE: Title 18, United States Code, Section § 1015(a) - False Statement Under Oath Relating to Naturalization or Citizenship

Penalties: Five years imprisonment;
\$250,000 fine
Three years supervised release;
\$100 special assessment.

COUNTS THREE AND SIX: Title 18, United States Code, Section § 1621 - Perjury

Penalties: Five years imprisonment;
\$250,000 fine
Three years supervised release;
\$100 special assessment.